

**MICHIGAN**  
**IN THE SUPREME COURT**

---

LAPEER COUNTY CLERK,

Plaintiff,

SUPREME COURT NO.: 121400

-v-

LAPEER CIRCUIT COURT,

Defendant,

**PLAINTIFF'S BRIEF IN  
SUPPORT OF COMPLAINT FOR  
SUPERINTENDING CONTROL**

And

COUNTY OF LAPEER,

Intervening Defendant.

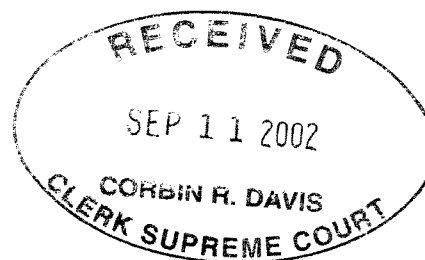
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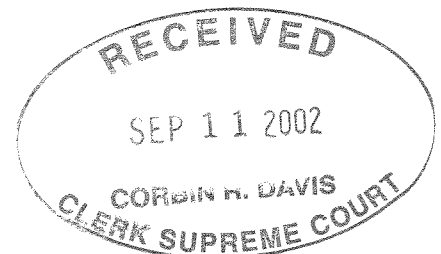


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## **STATEMENT OF JURISDICTION**

The Supreme Court has jurisdiction over this original Complaint for a Writ of Superintending Control pursuant to Article 6, § 4 of the Michigan Constitution of 1963 (General Superintending Control over Courts), MCR 3.301(A)(1)(a), and (G)(1)(Extraordinary Writs In General, And Procedure Where Relief Is Sought in Supreme Court or Court of Appeals), MCR 3.302(D)(1)(Superintending Control-Jurisdiction), and MCR 7.304(A). *See also* Association of County Clerks v Lapeer Circuit Judges, 465 Mich 559; 640 NW2d 567 (2002). Plaintiffs submit this brief pursuant to MCR 7.304(B) and MCR 7.212(C).

## **STANDARD OF REVIEW**

Constitutional issues and statutory construction are questions of law and are reviewed de novo on appeal. Mahaffey v Attorney General, 222 Mich App 325; 564 NW2d 104 (1997); Schulz v Northville Public Schools, 247 Mich App 178; 635 NW2d 508 (2001). Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc., 238 Mich App 394; 605 NW2d 685 (1999); Lincoln v General Motors Corp, 461 Mich 483; 607 NW2d 73 (2000). Therefore, the standard of review in the instant case is *de novo*.

## **STATEMENT OF QUESTIONS PRESENTED**

The Supreme Court, by its order entered on July 17, 2002, requested briefs on the following issues:

- (1) Whether the 40th Circuit Court's Administrative Order No. 2000-01

violates the Court's clear legal duty by preventing the Lapeer County Clerk from performing her constitutional and statutory circuit court duties?

Plaintiff answers "Yes."

Defendant answers "No."

- (2) What duties, if any, of the "clerk of the circuit court" can be inferred from Const 1963, art 6, § 14; and

Plaintiff answers "Yes."

Defendant presumably answers "No."

- (3) Under the separation of powers principles of Const 1963, art 3, § 2, does the Legislature have the authority to specify the duties of the clerk of the circuit court?

Plaintiff answers "Yes."

Defendant presumably answers "No."

## **INTRODUCTION**

The 40th Circuit Court ("Circuit Court"), in an attempt to comply with the statutory requirement of creating a Family Division, adopted Administrative Order No. 1998-1. Since that time, Administrative Orders 1999-01, 1999-02, and 2000-01 replaced Order 1998-1. Each Order contains identical language with respect to the Lapeer County Clerk's ("Clerk" or "Marlene Bruns") and the Family Court staffs' duties.

The Order prevents the County Clerk from performing her constitutional and statutorily mandated duties by usurping and transferring those duties to the Family Court staff, who are Probate Court employees rather than employees of the County Clerk. As a result, the Court failed to comply with its "clear legal duty" to permit the Clerk to carry out her constitutional and statutory duties. Previous, Plaintiff's filed the identical claims in the Court of Appeals. See In re Bruns, 242 Mich App 497; 619 NW2d 45 (2000). Although the Court of Appeals found for Plaintiff's on the merits, the Supreme Court reversed on jurisdictional grounds only. See Association of County Clerks v Lapeer Circuit Judges, 465 Mich 559; 640 NW2d 567 (2002). This lawsuit seeks a Writ of Superintending Control ordering the Circuit Court to discontinue such unlawful activities.

## **STATEMENT OF FACTS**

The Legislature created the Family Division of the Circuit Court by passing Public Acts 374 and 388 of 1996. MCL 600.1001 *et seq.* The effect of this legislation was to transfer certain types of cases to the newly created Family Division of the Circuit Court, dealing with family matters such as divorce, juvenile cases, child protective proceedings,

etc. *See* MCL 600.1021 (Jurisdiction of Family Division). In order to comply with the Family Division legislation, the Court issued Administrative Orders 1998-01, 1999-01, 1999-02, and 2000-01. Administrative Order 2000-01 is the Order currently in effect. *See* Affidavit of Marlene M. Bruns, attached as *Exhibit A*.<sup>1</sup>

Administrative Order 2000-01 (attached as *Exhibit B*) divided duties between the Clerk and the Family Division staff, which consists of undeputized Probate Court employees, and in the process, wrongfully assigned several duties to the Family Division staff which constitutionally and statutorily belong to the Clerk. Furthermore, the Circuit Court's Family Division Judges refuse to allow the Clerk, or her representative, to serve as the Court's Clerk while the Court is in session other than on motion day. In fact, each Family Division Judge assigned duties which lawfully belong to the County Clerk to their court recorders. *See*, Affidavit and attachment of Clerk, Marlene Bruns, attached as Exhibit A. (Although this Exhibit was originally prepared and submitted to the Court of Appeals in In re Bruns, 242 Mich App 497, *supra*, the conditions described therein have continued to the date of filing these pleadings.)

In an attempt to resolve the differences between them, Marlene Bruns scheduled a meeting with the Circuit Court to discuss the problems. Judges Higgins and Preisel were scheduled to meet with Ms. Bruns while attending a Family Division Management Team Meeting in Lansing put on by the State Court Administrative Office (SCAO). *See* Ms.

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<sup>1</sup> Each of the Administrative Orders contain identical language with respect to the division of duties between the Clerk and the Family Division's staff.

Bruns' Affidavit (*Exhibit A*). The meeting was scheduled for January 21 and 22, 1998. However, at the last minute, Judge Higgins called Ms. Bruns and informed her that Judge Preisel did not want to attend the meeting and that both Judges cancelled the reservations for everyone except Ms. Bruns. *See Exhibit A*. At that point, Ms. Bruns also cancelled her reservation. *See Exhibit A*.

To date, the Circuit Court continues to follow the division of duties established in Administrative Order 2000-01. It also continues to exclude the County Clerk, or her representative, from the Family Division sessions, other than on motion day.

On April 24, 2002, an original action for superintending control was filed by Plaintiff against the Defendant Circuit Court to compel Defendant to comply with the Constitution, applicable statutes, and court rules.

On June 3, 2002, Defendant filed its answer to Plaintiff's complaint. On May 17, 2002, the County of Lapeer filed a motion to appear in this matter as an Intervening Defendant.

In an Order entered on July 17, 2002, this Court directed the parties to include, among the issues addressed in this action, the following: (1) what duties, if any, of the clerk of the circuit court can be inferred from Const 1963, art 6, § 14; and (2) under the separation of powers principles of Const 1963, art 3, § 2, does the Legislature have the authority to specify the duties of the clerk of the circuit court.



## ARGUMENT

### 1. AN ORDER OF SUPERINTENDING CONTROL IS PROPER IN THE INSTANT CASE.

Superintending Control is the proper vehicle to challenge the general practices of an inferior court. In re Lafayette Towers v Wayne Circuit Judge, 200 Mich App 269, 272; 503 NW2d 740 (1993), *citing*, Bd. Of Library Cmm'rs v Judges of the 70th District Court, 118 Mich App 379; 325 NW2d 777 (1982); Automatic Music and Vending Corp. v Liquor Control Comm., 141 Mich App 458,463; 367 NW2d 413 (1985), *rev'd on other grounds*, 426 Mich 452; 396 NW2d 204 (1986).

Under MCR 3.302, a Complaint for Superintending Control may be filed when there is no other adequate legal remedy. Frederick v Presque Isle County Circuit Judge, 439 Mich 1, 14-15; 476 NW2d 142 (1991). In the instant case, the Clerk could not appeal the Circuit Court's Administrative Order. Therefore, a Complaint for Superintending Control is proper.

The standard for issuing a Writ of Superintending Control is to determine whether the lower court failed to perform a "clear legal duty." Id. at 15, *citing*, People v Flint Municipal Judge, 383 Mich 429; 175 NW2d 750 (1970). In the instant case, and as stated more fully below, Administrative Order No. 2000-01 violates the Circuit Court's clear legal duty to draft an Administrative Order which allows the Clerk to perform her constitutional and statutory circuit court duties.

2. **ADMINISTRATIVE ORDER 2000-01 USURPS THE CLERK'S CONSTITUTIONAL AND STATUTORY DUTIES.**

Michigan's constitution, laws, and court rules mandate that the county clerks perform specific duties for the circuit courts. As such, a circuit court is not at liberty to refuse to allow the county clerk to perform these duties; unfortunately, that is the precise result of Administrative Order 2000-01.

A. **THE CIRCUIT COURT HAS A CLEAR LEGAL DUTY TO ALLOW THE CLERK TO PERFORM HER CONSTITUTIONAL AND STATUTORY CIRCUIT COURT DUTIES.**

1. The Clerks Constitutional Duties.

Article 6, § 14 of the Michigan Constitution of 1963 states:

Sec. 14. The Clerk of each county organized for judicial purposes or other officer performing the duties of such office as provided in a county charter shall be clerk of the circuit court for such county.

Emphasis added.

Clearly, Michigan's Constitution mandates that the "clerk of each county organized for judicial purposes...shall be clerk of the circuit court for such county." MCL 600.1001 created the Family Division of the Circuit Court. The Family Division is part of the Lapeer County Circuit Court. As such, the Lapeer County Clerk (Ms. Bruns) is the clerk for the Family Division of the Lapeer County Circuit Court.

2. The Clerk's Statutory Duties.

MCL 600.571 clearly establishes the county clerk's circuit court duties.

Section 571 states:

The county clerk of each county shall

(a) Be the clerk of the circuit court for the county.

(b) Attend the circuit court sessions.

(c) Appoint in counties with more than 1 circuit judge or having more than 100,000 population but less than 1,000,000 a deputy for each judge and approved by the judge to attend the court sessions. Each deputy shall receive a salary of at least \$6,500.00

(d) On the first day of each court term render an accounting to the court of all funds, stocks or securities deposited with the court clerk pursuant to court order.

(e) Within 10 days after the beginning of each court term pay over to the county treasurer all fees belonging to the county received during the preceding court term together with an accounting thereof.

(f) Have the care and custody of all the records, seals, books and papers pertaining to the office of the clerk of such court, and filed or deposited therein, and shall provide such books for entering the proceedings in said court, as the judge thereof shall direct.

(g) Perform such duties as may be prescribed by court rule. Whenever in any statute of this state, the designation "register in chancery" occurs, it shall be deemed to apply to the clerk of the circuit court.

Emphasis added.

As stated above, the circuit court's family court judges have simply ignored the clear mandate of the statute and the state constitution and have refused to allow the clerk to attend court sessions other than on motion days. *See Ms. Bruns' affidavit (Exhibit a).* This practice is not specifically addressed by the circuit court's administrative order other than to state that the "clerk staff will continue to attend the domestic motion docket

sessions of the family court...". (See administrative order 2000-01, ¶ 4, attached as *Exhibit b*). However, the above statute clearly requires the county clerk to "[a]ttend the circuit court sessions." The refusal of the court to permit the clerk to attend its sessions is a violation of its "clear legal duty." The above quoted statute also requires "an accounting to the court of all funds, stocks or securities deposited with the court clerk pursuant to court order." MCL 600.571(d). Furthermore, the statute requires the clerk to "pay over to the county treasurer all fees...received during the preceding court term together with an accounting thereof." MCL 600.571(e). Again, the statute requires the clerk to perform clear legal "accounting" duties for the court. However, the family division of the circuit court, in juvenile cases, has refused to allow the clerk to collect filing fees, court ordered fines, costs, restitution, as well as a myriad of other fees, and costs. (see attachment 1, ¶ 5 to Ms. Bruns' affidavit (Exhibit a). Rather, such fiscal responsibilities are now being performed by persons unauthorized to do so under the laws of the state of Michigan.

Furthermore, the Court's Administrative Order states, in pertinent part, as follows:

In order to implement the changes required by the legislation creating the Family Division of the Circuit Court (PA 374 and 388 of 1996), to enhance and clarify the procedures to be followed in the new Family Court, to clarify the role of the County Clerk in the operations of the Family Court, to merge the procedures previously followed in juvenile, child protective proceedings and ancillary proceedings into the Family Court, to maintain the Court's data entry system, and to adopt new procedures for efficient administration of the Family Court, the Court issues the following administrative order:

\* \* \*

2. The Family Court staff will continue to accept filings, maintain files, prepare orders and complete entries into the Court's data system in all juvenile cases, child protective proceedings, name changes, adoptions, and ancillary proceedings and shall be responsible for the care and maintenance of those records.

3. The Family Court staff will be responsible for scheduling all juvenile cases, child protective proceedings, name changes, adoptions, and ancillary proceedings. In addition, the Family Court staff will be responsible for making referrals, scheduling hearings, preparation of orders and arranging pre-trials and trials in domestic cases. The Family Court staff will make appropriate entries into the Court's data systems of these proceedings.

\* \* \*

5. The Family Court staff shall continue to be responsible for all filing fees, receipts, disbursements and accountings for support payments, restitution, administrative and program fees, and child care funds received in juvenile cases, child protective proceedings, name changes, adoptions and ancillary proceedings. The County Clerk shall continue to accept all filing fees in domestic cases for the Family Court.

AO 2000-01 (*Exhibit B*) (emphasis added).

The Order states that the Family Court staff will continue to accept filings and that “the Family Court staff shall continue to be responsible for all filing fees, receipts, disbursements and accountings for support payments....” See AO 2000-01, ¶¶ 2 and 5 respectively (*Exhibit B*). Although the statute requires the clerk to “render an accounting to the court of all funds,” the Circuit Court’s Administrative Order prohibits the Clerk from collecting fees in juvenile cases, child protective proceedings, name changes,

adoptions and ancillary proceedings. In effect, the Circuit Court's Administrative Order makes it impossible for the Clerk to perform her statutorily mandated duty of rendering "an accounting to the court of all funds."

The Administrative Order also violates the Circuit Court's clear legal duty to assign the care and maintenance of its records to the Clerk. Section 571(f) states, the county clerk shall "[h]ave the care and custody of all the records, seals, books and papers pertaining to the office of the clerk of such court..." Emphasis added. However, the Court's Administrative Order places the responsibility for the care and maintenance of all records for juvenile cases, protective proceedings, name changes, adoptions, and ancillary proceedings, as well as entries into the Court's data system with the Family Court staff rather than the Clerk. *See* AO 2000-01, ¶ 2 (*Exhibit B*). The Administrative Order also directs the Family Court staff to make appropriate entries into the Court's data systems with respect to the proceedings enumerated in paragraph 3. *See* AO 2000-01, ¶ 3 (*Exhibit B*).

Again, the Circuit Court's Order violates the law (MCL 600.571(f)) by placing responsibility for the care and maintenance of records with the Family Court staff rather than the Clerk. The statute clearly dictates that the clerk shall "have the care and custody of all the records." By assigning, to the Family Court staff, the care and maintenance of the records enumerated in paragraph 2 of its Order, the Circuit Court violated its clear legal duty to permit the Clerk to assume the care and custody of these records.

Furthermore, the Circuit Court assigned to the Family Court staff the duty of making certain entries into the Court's data system (AO 2000-01, ¶¶ 2 and 3). A data system is nothing more than an electronic record. As such, MCL 600.571(f) mandates that the County Clerk shall have the care and custody of these records as well. Again, the Circuit Court's Administrative Order violates its clear legal duty to give the care and custody of the Court's records to the Clerk.

3. Jurisdiction Of The Family Division.

MCL 600.1021(2)(a), Jurisdiction of Family Division, gives the Family Division ancillary jurisdiction over cases involving guardians and conservators. The Circuit Court's Administrative Order assigns the responsibility for the care and maintenance of ancillary proceedings records to the Family Court staff rather than the Clerk. The Circuit Court's Order also assigns responsibility for the fees, receipts, etc. for ancillary proceedings to the Family Court's staff rather than the Clerk. See AO 2000-01, ¶¶ 2 and 5 respectively (*Exhibit B*). In this respect also, the Circuit Court's Administrative Order violates a clear legal duty to assign ancillary proceedings regarding guardianship and conservators, along with the care and maintenance of the records for same, to the Clerk rather than the Family Court staff.

i. The Clerk's Duties Pursuant To The Michigan Court Rules.

The Clerk's statutory duty, stated at MCL 600.571(g), requires the clerk to perform such duties as may be prescribed by Court Rule. MCR 8.105, General Duties of Clerks, enumerates many of those duties; including:<sup>2</sup>

The amended MCR 8.105 states: **Rule 8.105 General Duties of Clerks.** (A) **Office Hours.** The office of the clerk of every court of record must be open, and the clerk or deputy clerk must be in attendance, during business hours on all days except Saturdays, Sundays, and legal holidays, and at other times that the court is in session. (B) **Court Records and Reporting Duties.** The clerk of every circuit court shall maintain court records and make reports as prescribed by MCR 8.119. (C) **Notice of Judgments, Orders, and Opinions.** Notice of a judgment, final order, written opinion or findings filed or entered in a civil action in a court of record must be given forthwith in writing by the court clerk to the attorneys of record in the case, in the manner provided in MCR 2.107. (D) **Filing of Assurance of Discontinuance Under MCL 445.870; MSA 19.416(120).** The clerk of every judicial circuit shall, without charge, receive and file an

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<sup>2</sup> Plaintiff's Brief in Support of Complaint for Writ of Superintending Control ("Plaintiff's Brief") failed to note that MCR 8.105 was amended effective Nov. 1999, when amendments were made to "acomodate statewide records standards applicable to all courts and all clerks of the courts...." Staff Comment to 1999 Amendment.

The new rules are not altered in substance, and therefore the Plaintiffs' arguments with regard to MCR 8.105 are sound in all but their technical failure to cite to the new MCR 8.105 and MCR 8.119.



assurance of discontinuance accepted by the Attorney General under MCL 445.870; MSA 19.416(120).

New MCR 8.119 includes several provisions of old MCR 8.105 that were transferred with technical, but not substantive, changes. Pertinent sections include: **Rule 8.119 court Records and Reports; Duties of Clerks \*\*\* (B) Records Standards.** The clerk of the court shall comply with the records standards in this rule and as prescribed by the Michigan Supreme Court. **(C) Filing of Papers.** The clerk of the court shall endorse on the first page of every document the date on which it is filed. (...) **(D) Records Kept by the Clerk.** The clerk of the court of every trial court shall keep records in the form and style the court prescribes and in accordance with Michigan Supreme Court records standards and local court plans. A court may adopt a computerized, microfilm, or word-processing system for maintaining records that substantially complies with this subrule.

(1) *Indexes and Case Files.* The clerk shall keep and maintain records of each consisting of a numerical index, an alphabetical index, a register of actions, and a case file in such form and style as may be prescribed by the Supreme Court. Each case shall be assigned a case number on receipt of a complaint, petition, or other initiating document. \*\*\* (4)

*Other Records.* The clerk shall keep in such form as may be prescribed by the court, other papers, documents, materials, and things filed with or handled by the court including but not limited to wills for safekeeping, Exhibits and other discovery materials, requests for search warrants, marriage records, and administrative activities. **(E) Access to Records.** The clerk may not permit any records or paper on file in the clerk's office to

be taken from it without the order of the court. (1) Unless access to a file, a document, or information contained in a file or document is restricted by statute, court rule, or an order entered pursuant to subrule (F), any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in subrule (E)(2) and (E)(3). \*\*\* (G)

**Reporting Duties.** (1) The clerk of every court shall submit reports and records as required by statute and court rule. (2) The clerk of every court shall submit reports or provide records as required by the State Court Administrative Office, without costs.

The court's administrative order, (AO 2000-01, ¶ 2 (*Exhibit b*)) assigns the duty to accept filings, maintain files, and prepare orders in certain family division cases to the family court staff, rather than the clerk. Whether the family court staff is endorsing the documents with the dates received is unknown; however, the clerk does not endorse these documents because she does not receive them. The circuit court's administrative order violates its clear legal duty to assign the responsibilities of accepting filings, etc. To the clerk for endorsing.

Subsection (F) of MCR 8.105 clearly requires the clerk to keep "[s]uitable indexes of civil actions." Subsection (F) also requires the clerk to keep "any other order which the court may direct to be kept." "Suitable indexes of civil actions" and "any other order" refer to records or papers which are to be kept by the Clerk. However, the Administrative Order at paragraph 2, assigns the care and maintenance of certain Court records to the Family Court staff. *See* AO 2000-01, ¶ 2 (*Exhibit B*).

The Court Rule, at subsection (H), Reporting Duties, requires the Clerk to submit reports and records in juvenile-offense dispositions and dismissals. Again, this responsibility is placed with the Family Court staff by the Administrative Order. See AO 2000-01, ¶ 2 (*Exhibit B*).

To summarize, the Circuit Court violated its “clear legal duty” under Michigan’s Constitution, MCL 600.571, and MCR 8.105, to assign certain duties of the Family Division of the Circuit Court to the County Clerk. Because the Circuit Court violated its clear legal duty, an order for superintending control should be issued.

b. **THE CLERK HAS NO ADEQUATE LEGAL REMEDY WITH RESPECT TO ADMINISTRATIVE ORDER 2000-01.**

A Writ of Superintending Control is not available if the parties seeking it can appeal the adverse decision to a higher court or tribunal. Thus, in addition to finding a violation of a “clear legal duty” by the lower court or tribunal, the Plaintiff must have no adequate legal remedy available to properly bring an action for Superintending Control. Basically, “no adequate legal remedy” references a Plaintiff’s inability to appeal the lower tribunal or court’s decision. The courts are fairly creative with the “no adequate legal remedy” requirement. For example, in Lockhart v Thirty-Sixth District Court Judges, 204 Mich App 684; 516 NW2d 76 (1994), the court found that the attorney had no adequate legal remedy to challenge the district court judge’s policy of imposing sanctions.

The Lockhart case involved a judge who sanctioned attorneys not physically present in his courtroom when their cases were called. The Court of Appeals determined that Superintending Control was the proper procedure to challenge the judge's policy. In addressing the "no adequate legal remedy" requirement, the court reasoned that a challenge to each dismissal or assignment of costs separately would have constituted a remedy too time-consuming and burdensome to be called adequate. Id., at 691.

In the instant case, the Lapeer County Clerk has no avenue of appeal with respect to Administrative Order No. 2000-01. Without an appeal mechanism available to the Clerk, the "no adequate legal remedy" requirement is met. However, the same would be true if the Clerk was forced to challenge each decision or direction given by each judge to a subordinate clerk. *See, Lockhart, supra.* Such a procedure would constitute a "remedy too-time consuming and burdensome to be called adequate." Because no adequate legal remedy is available to the Clerk, a Writ of Superintending Control is appropriate.

1. **Article 6, § 14 Establishes the County Clerk as the Clerk of the Circuit Court, and the Duties of the County Clerk are Provided by Law as Required in Article 7, § 4**

On July 17, 2002, this Court entered an Order directing the parties to brief two additional arguments, the first of which is:

"What duties, if any, of the "clerk of the circuit court" can be inferred from Const 1963, art 6, § 14...."

This Constitutional provision, on its face, vests the County Clerks with the power to carry out the duties of clerk to the circuit court, without specifying what those duties

are. The arguments which follow, however, reveal that Const 1963, art 7, § 4 provides the vehicle by which such duties will be enumerated while the language of Const 1963, art 6, § 14 clearly vests the county clerks with Constitutional authority to carry out those duties, exclusively, within the judicial branch of government and on behalf of the circuit courts.

The office of County Clerk, including the office of the Lapeer County Clerk, is established pursuant to Article 7, § 4 of the Michigan Constitution of 1963, which states that “[t]here shall be elected for four-year terms in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be provided by law.”

The office of the County Clerk is thus not actually created by Article 6, § 14 of the Michigan Constitution. Rather, it is created under Article 7, which deals with Local Government – but county clerks are given circuit court authority and responsibility under Article 6, § 14, which is in the Constitutional article governing the Judicial Branch of Government.

Article 6, § 14 states: “The clerk of each county organized for judicial purposes or other officer performing the duties of such office as provided in a county charter shall be clerk of the circuit court for each county.”

As noted in the Defendant’s Answer, the county clerks in Michigan “wear two constitutional hats,” executive and judicial. See Defendant’s Answer to Plaintiff’s Complaint for Writ of Superintending Control, p. 7. While Article 6, § 14 does not

expressly assign specific substantive circuit court duties to the County Clerk, it specifies that the county clerk “shall be” the clerk of the circuit court, leaving no doubt as to who has the authority to act as the circuit court clerk.

Indeed, the committee that drafted art 6, § 14 and proposed its adoption by the committee of the whole, for inclusion in the 1963 Constitution was emphatic about this matter. Delegate Danhof, speaking on behalf of the committee, at the Constitutional Convention explained the inclusion of county clerks in art 6, § 14 as follows:

When we reached this section in our deliberation, the question arose within the committee as to whether or not this was a proper matter for the judiciary committee to handle. I think the first sentence, “the clerk of each county organized for judicial purposes shall be clerk of the circuit court for such county” is properly within the judicial article and within the jurisdiction of our committee. Our committee heard from various people, and we reached a unanimous recommendation that this should continue. There was talk that perhaps the circuits should be allowed to pick their own clerk, but this was discarded. II Const Convention, 1963, p 1369.

Then, in art 7, which creates the office of county clerk, the Constitution provides that the duties of the county clerk shall be specified in the law. Mich Const art 7, § 4.

The mention of the county clerk in two separate sections of the Constitution is simply a function of the clerk’s dual role. The fact that the duties of the county clerks are given their Constitutional mention in art 7, rather than art 6, does not lessen or weaken the import of the express designation of the county clerks as clerks to the circuit court. See In re Headnotes to Opinions, 43 Mich 641, 642; 8 NW2d 552 (1881) (“In providing in the Constitution for such an officer, the usual and customary duties were contemplated as belonging to the office and inseparably connected therewith.”). This approach simply

adheres to the structure of the Constitution by creating the elected office of county clerk and directing the specification of its duties in law within the local government article, while simultaneously granting judicial status and responsibility to the county clerk within the judicial article of the Constitution.

Furthermore, the absence of language designating specific tasks or duties to the county clerk in the Constitution is not an indication that no such duties exist; rather, it is typical of the nature of the Michigan Constitution, which sets broad outlines of governmental power and duties only, leaving details to the Legislature.

Constitutions do not change with the varying tides of public opinion and desire; the will of the people therein recorded is the same inflexible law until changed by their own deliberative action; and it cannot be permissible to the courts that ... they shall subject these instruments, which in main only undertake to lay down broad general principles, to a literal and technical construction.

Council of Organizations and Others for Education About Parochiaid v Governor of Michigan, 216 Mich App 126, 134; 548 NW2d 909 (1996), *lv granted* 453 Mich 911; 554 NW2d 903 (1996), citing People ex rel Bay City v State Treasurer, 23 Mich 499, 506 (1871).

2. **The Duties of the County Clerk as Clerk of the Circuit Court May Be Specified By Law Without Violation of the Doctrine of Separation of Powers**

The intervenors claim that the Circuit Court alone may “specify what duties the County Clerk must perform for the court,” and concludes that duties imposed by any other source, or any other branch of government, would violate the doctrine of separation of powers. See Lapeer County’s Brief in Support of Answer to Plaintiff’s Complaint for

Writ of Superintending Control (“Lapeer Co. Brief”), p. 11. This conclusion is not simply in error – it also ignores the express language of the Constitution and seems to forget about the authority of the Michigan Supreme Court to regulate practice and procedure of Michigan courts. Moreover, it grossly oversimplifies the doctrine of separation of powers.

The Constitution states simply that the county clerk “shall be the clerk of the circuit court for such county.” Const 1963, art 6, § 14. The Constitution also states that the duties of the county clerk shall be provided by law. The Michigan Supreme Court has promulgated rules which regulate the practice and procedure of the court, and the Legislature has confirmed and endorsed the county clerk’s circuit court authority. These three bases of authority support the conclusion that the circuit court Judges alone cannot impose their interpretation of the role or the authority of the circuit court clerk when that interpretation conflicts with Michigan law. The doctrine of separation of powers is not threatened or violated by this conclusion, because the circuit court clerk occupies one of the areas of government in which overlapping functions occur and, barring a *complete usurpation of the constitutional powers of another branch*, such overlap would be permissible and expected in the efficient administration of government, even without the power granted to clerks by art 6.

a. **A Party Challenging the Constitutionality of an Act Faces an “Extremely Rigorous Standard”**

The Supreme Court reviewed the applicable standard of review for challenges to the constitutionality of statutes in Judicial Attorneys Ass’n v State, 459 Mich 291, 309-



310; 586 NW2d 894 (1998), *rehg gtd*, Judicial Atty's Ass'n v State, 590 NW2d 569 (1999):

The party challenging the facial constitutionality of an act 'must establish that no set of circumstances exists under which the [a]ct would be valid. The fact that the ... [a]ct might operate unconstitutionally under some conceivable set of circumstances is insufficient....' (United States v Salerno, 481 U.S. 739, 745, 107 S.Ct. 2095; 95 L.Ed.2d 697 (1987).) '[I]f any state of facts reasonably can be conceived that would sustain [a legislative act], the existence of the state of facts at the time the law was enacted must be assumed.' 16 Am Jur 2d, Constitutional Law, § 218, p 642.

Clearly, a party challenging the facial constitutionality of a statute faces an extremely rigorous standard.

Further, '[i]t is one of the oldest and most well-established tenets of our jurisprudence that legislative enactments enjoy a presumption of constitutionality.' Gora v Ferndale, 456 Mich 704, 719; 576 NW2d 141 (1998). Courts are required to give the 'presumption of constitutionality to a statute and construe it as constitutional unless the contrary clearly appears.' Caterpillar Inc v Dep't of Treasury, 440 Mich. 400, 413; 488 NW2d 182 (1992).

Judicial Attorneys Ass'n at 310.

Furthermore, it has been held that "in a controversy involving coequal branches of government, proof must be established by clear and convincing evidence." Seventeenth Dist Probate Court v Gladwin County Bd of Comm'rs, 155 Mich App 433, 453; 401 NW2d 50 (1986).

b. **Duties of the County Clerk are Provided by Court Rule and Statute in Accordance with the Constitution**

Pursuant to the constitutional directives discussed above, the duties and powers of the county clerk as established by the Michigan Constitution are further defined by both the Michigan Court Rules and in statutes.

i. **The Clerk's Duties Pursuant to Michigan Court Rules**

Article 6, § 5 grants the Supreme Court “general superintending control over all courts” which has been interpreted to grant exclusive authority to determine the general practice and procedure in Michigan courts. See Lapeer County Clerk v Lapeer Circuit Judges (In re Bruns), 242 Mich App 497, 514; 619 NW2d 45 (2000), *lv grtd in part*, Lapeer County Clerk v Lapeer Circuit Judges, 463 Mich 968; *rev'd Ass'n of County Clerks v Lapeer Circuit Judges*, 463 Mich 969; 623 NW2d 246 (2001), 465 Mich 559; 640 NW2d 567 (2002). Rules promulgated by the Supreme Court take precedence over conflicting statutes if the rules govern purely procedural matters in the courts. See, e.g., Spears v NBD Bank, NA (In re Gordon Estate), 222 Mich App 148, 153-54; 564 NW2d 497 (1997) (Court rules trump conflicting statutes on procedural matters, except where the statutes go beyond procedure and embody a substantive legislative policy consideration other than judicial dispatch of litigation). When, however, a court rule contravenes a legislatively declared principle of public policy (having as its basis something other than court administration), the court rule must yield. See McDougall v Schanz, 461 Mich 15; 597 NW2d 148 (1999), overruling Perin v Peuler (On Rehearing), 373 Mich 531, 541 (1964), *inter alia*.

The Supreme Court has promulgated procedural rules regarding the circuit court clerk's duties, as previously discussed, at MCR 8.105 and MCR 8.119.

ii. **The Clerk's Duties Pursuant to Michigan Statutes**

The Legislature, pursuant to Article 7, § 4 of the Michigan Constitution, which provides that the County Clerk's duties "shall be provided by law," confirmed the grants of authority in the Constitution and further defined the duties of the county clerk by statute. The main provisions affecting the duties of the clerks are provided in Section 571 of the Revised Judicature Act, MCL 600.571 and are discussed in greater detail, *supra*.

It is well established that the Legislature may pass laws that further define the role of the circuit court beyond the broad outline included in the Constitution, so long as their enactments do not invade the constitutional powers of the judiciary (See Part c, *infra*). "So far as is necessary to their self-protection the right of the courts is paramount or exclusive; but beyond that point the legislative department also has constitutional rights in the exercise of the police power." State Bar of Michigan v Galloway, 124 Mich App 271, 281; 335 NW2d 475 (1983) *aff'd* 422 Mich 188; 369 NW2d 839 (1985), quoting Detroit Bar Assn v Union Guardian Trust Co, 282 Mich 216, 227-228; 276 NW 365, *rehearing den*, 282 Mich 707; 281 NW 432 (1937); see also Whallon v Ingham Circuit Judge, 51 Mich 503; 16 NW 876 (1883): ("The number of terms of the circuit court and the time of holding the same have always been discretionary with the legislature; provided [the Legislature's requirements are] as required by the constitution.").

Thus, the Legislature is permitted, and even directed, to pass laws that affect the courts.<sup>3</sup> These laws will yield if they attempt to regulate matters of pure court procedure with no indication of a legislative policy (See Spears, 222 Mich App 148 at 153-154), or when they violate the doctrine of separation of powers, which is analyzed in the next section.

**c. The Law of Separation of Powers**

Michigan's Constitution provides for the separation of powers in art. 3, § 2, which states:

“Sec. 2. The powers of government are divided into three branches; legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this Constitution.”

The Michigan Supreme Court has stated that “[t]his separation of powers among the three branches of government is designed to preserve the independence of each branch.” Judicial Attys Ass’n at 310, citing In re the “Sunshine Law” 1976 PA 267, 400 Mich 660, 662; 255 NW2d 635 (1977). The doctrine ensures that no department prevents another department “from fulfilling its responsibilities to the people under the Constitution.” Employees & Judge of the Second Judicial Dist Court, Second Division v Hillsdale County, 423 Mich 705, 717; 378 NW2d 744 (1985).

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<sup>3</sup> E.g., “The doctrine of separation of powers does not preclude the enactment of laws regulating the employment of public employees who serve the courts.” American Federation of State, County and Municipal Emp v Recorder’s Court Judges, 399 Mich 1, 28-29; 94 NW2d 220 (1976).

Michigan has expressly adopted the view that there will be overlap in function and control among the branches without violation of the doctrine: “The separation of powers doctrine has never been interpreted in Michigan as meaning there can never be any overlapping of functions between branches or no control by one branch over the acts of another.” People v Trinity, 189 Mich App 19, 22-23; 471 NW2d 626 (1991), citing Soap & Detergent Ass’n v Natural Resources Com, 415 Mich 728, 752; 330 NW2d 346 (1982).

“Instead, Michigan has adopted the view of the separation of powers doctrine that James Madison expressed in The Federalist No. 47: ‘...where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted.’” Judicial Attys Ass’n, 459 Mich at 311 (internal citations omitted).

“Some overlapping is permissible provided the area of one branch’s exercise of another branch’s power is very limited and specific.” People, at 22-23 (1991); Soap, 415 Mich at 728, and Sharp v Genessee County Election Com, 145 Mich App 200, 209; 377 NW2d 389, 393 (1985).

In keeping with these opinions, when a question arises regarding the permissibility of a sharing of power, the court will ask “whether the legislatively prescribed sharing of ... functions delineated [in the statute] is sufficiently limited and specific so as not to encroach on the exercise of the **constitutional responsibilities** of the judicial branch.” Judicial Attys Ass’n, 459 Mich at 297 (emphasis added). A violation of the doctrine of separation of powers will not be found unless the *constitutionally granted powers* of one

of the three branches of government are *completely* taken over by another. See Sharp, supra, at 208-209 (holding that presence of a judge on three-member county election commission did not violate the doctrine of separation of powers because the judge could not constitute a quorum or in any way exercise the entire power of the county election commission).

Thus, a branch of government violates the doctrine of separation of powers when it prevents another branch from exercising its *constitutional* duties – the doctrine is not violated by overlapping functions or control by one branch over the acts of another branch that do not rise to the level of constitutional duties. Hopkins v Michigan Parole Bd, 237 Mich App 629, 636; 604 NW2d 686 (1999), citing Judicial Attys Ass’n, supra. The authority that the county clerk seeks to rightfully exercise in the circuit court involves the administration of the court, and does not touch upon, let alone usurp, the constitutional powers or functions of the judiciary. See Johnson v Kramer Bros Freight Lines, Inc, 357 Mich 254; 98 NW2d 586 (1959) (“The power given to a court under the constitution is judicial power. It is beyond the power of the legislature to take from it that judicial power, and it is equally beyond the authority of the legislature to confer upon it power not judicial).

In this case, the legislature has specified distinct and limited duties to be performed by the county clerk in the Revised Judicature Act, simultaneously confirming that the county clerk shall be the clerk of the circuit court of the county. MCL 600. 571. This assignment does not invade the judicial sphere whereby the judiciary exercises its powers

of fact finding, adjudication of rights among parties, and determining remedies. It is true, as the Defendants pointed out in their answer and brief, that the judicial branch has the power to control those who are employees of the court. See Judges for Third Judicial Circuit v County of Wayne, 383 Mich 10, 21-22; 172 NW2d 436 (1969), superseded by 386 Mich 1; 190 NW2d 228 (1971) (on rehearing; holding that legislative and judicial branches must exercise primarily executive housekeeping chores that are prerequisite to the exercise of their constitutionally-granted powers). However, county clerks are elected county officials who receive a salary determined by the Board of supervisors. MCL 45.401. See Judges, 386 Mich at 30-31 (1971) (listing persons who are employees of the circuit court, not including the circuit court clerk); see also Smith v Perkins, 139 Mich 463, 464; 102 NW2d 971 (1905) (“The county clerk is a constitutional officer....”).

The intervenors misunderstand and misuse the term “inherent powers” when they state that the “judiciary’s constitutional inherent [sic] powers are necessarily broad....” Lapeer Co. Brief, p. 12. Constitutional powers are those granted by the Constitution, while inherent powers are those which are “inherent” – that is, they are implicit and not expressly granted; they may “flow from the constitution,” but they are not express. Persichini v William Beaumont Hosp, 238 Mich App 626, 638-639; 607 NW2d 100 (1999) (finding that trial courts had power to impose sanctions as punishment for misconduct despite *absence of authorization by statute or court rule*). Rather, they pertain to the court’s authority to direct the administration of the courts when “*necessary* to

exercise its powers as a coordinate branch of government.” Id., citing In re the “Sunshine Law” 1976 PA 267, 400 Mich at 662-63 (1977).

Where statutes and/or court rules prescribe the duties of the clerk of the circuit court, there is no need to resort to the administrative power of the court; that is, it is not *necessary*. Longstanding Michigan caselaw holds that where the duties of the county clerk acting as the circuit court clerk were NOT prescribed either by statute or by the Constitution, “[h]e is therefore subject to all the legitimate orders of the court of which he is clerk.” Smith v Perkins, 139 Mich 463, 464; 102 NW2d 971 (1905) (emphasis added). The clear import of this holding is that where there are statutory or constitutional duties assigned to the county clerk in her capacity as the circuit court clerk, she is NOT subject to conflicting orders of the court. See id.

The intervenors also mischaracterize the holding of the court in State Bar of Michigan v Galloway, 124 Mich App 271; 335 NW2d 475 (1999) by cutting off the quote in a way that distorts the court’s holding. Intervenors quote the court as stating that “the inherent power of the courts is paramount as to matters relating to the administration of judicial functions...” at p. 12 of their brief, but the quote actually reads as follows:

[W]hile the inherent power of the courts is paramount as to matters relating to the administration of judicial functions (*i.e.*, regulation of the practice of law in courts), the same is not true in other areas of the practice of law. The holdings in several cases suggest that **the supreme inherent power of the judiciary does not extend beyond legal practice in the courts.** Id. At 280. (Emphasis added).

The court actually held that the:



Legislature may also regulate the practice of law; such statutory enactments are not an unconstitutional invasion of judicial power.... Rather such legislation is a means of regulating the practice of law coexisting with the inherent authority of courts. Id. at 271. (internal citations omitted).


Thus, the intervenors have actually demonstrated that even in the only recognized area of the courts' paramount inherent powers, Legislative enactments can coexist without invading judicial power.

### **CONCLUSION**

In sum, Defendants fail to meet the "extremely rigorous standard" required to establish that a statute is unconstitutional. The record does not show that the provisions of the Court Rules and the RJA designating various duties of the county clerk in her capacity as the circuit court clerk place the *whole* power of the judicial branch in the same hands of one exercising the *whole* power of another branch, whether it be legislative or executive. The authority and duties assigned to the circuit court clerk by the Legislature, even if they do overlap with those possessed by the judicial branch, are both limited and specific, and therefore do not invade the constitutional powers of the judiciary under the analysis applied by Michigan courts. See People v Trinity, supra at pp 22-23. Thus, it is apparent that Defendants have engaged in unlawful activities by preventing the Plaintiff Clerk from carrying out her lawful duties in the family court and the issuance of relief in the nature of Superintending Control is appropriate.

Respectfully submitted,

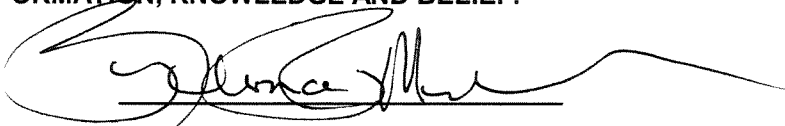
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.  
Michael J. Hodge (P25146)  
Robert A. LeFevre (P59094)  
Polly Ann Synk (P63473)

By:   
Michael J. Hodge  
Attorneys for Plaintiff  
One Michigan Avenue, Suite 900  
Lansing, MI 48933-1609  
(517) 487-2070

Dated: September 11, 2002

**Affidavit of Mailing**

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by mailing the same to them at their respective business addresses as directed by the pleadings and records herein, with postage fully prepaid thereon on the date indicated, via first class mail. I DECLARE THAT THE STATEMENTS ABOVE ARE TRUE TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF.



Rhonda R. Miller  
Dated: September 12, 2002

LALIB:116430.1\112905-00001

# **EXHIBIT A**

STATE OF MICHIGAN

IN THE COURT OF APPEALS

In re MARLENE M. BRUNS,  
in her capacity as the  
Lapeer County Clerk,  
and THE MICHIGAN ASSOCIATION  
OF COUNTY CLERKS

Court of Appeals No. \_\_\_\_\_

\_\_\_\_\_  
Michael J. Hodge (P25146)  
Bernard R. Marinelli (P46221)  
MILLER CANFIELD PADDOCK AND STONE PLC  
Attorneys for Plaintiffs  
One Michigan Avenue, Suite 900  
Lansing, MI 48933  
(517) 487-2070

MILLER CANFIELD PADDOCK AND STONE, P.L.C.

AFFIDAVIT OF MARLENE M. BRUNS

STATE OF MICHIGAN)

:ss

COUNTY OF INGHAM )

Marlene M. Bruns, being duly sworn, states as follows:

1. I am the Lapeer County Clerk, and one of the named Plaintiffs in the above-captioned matter.

2. I generated the document titled Duties Judges Higgins and Preisel Refuse to Allow the Clerk to Perform (attachment 1) based on my personal knowledge of the workings of the Family Division of the Lapeer County Circuit Court.

3. The Lapeer County Circuit Court's Administrative Order 2000-01 is, upon information and belief, the Administrative Order which is still in effect. This is true even though it has not been officially approved by the State Court Administrative Office yet. However, it has been submitted to that office for its approval.

4. Judges Higgins and Preisel, Lori Curtiss, and I were scheduled to attend a Family Division Team Meeting in Lansing put on by the State Court Administrative Office. The meeting was scheduled for January 21 and 22, 1998. The purpose of the meeting was to discuss the problems we were having with the Family Court Division and to try and resolve our differences.

5. At the last minute, Judge Higgins called and informed me Judge Preisel did not want to attend the meeting and had cancelled his, Judge Preisel's and Lori Curtiss' reservations. As a result, I also cancelled my reservation.

6. Since that time, I have had three or four meetings with Judges Higgins and Holowka, however, the issues have not been resolved. At this point, further meetings would be fruitless.

7. If called as a witness in this matter, I can testify competently to the facts stated herein.

Further Deponents sayeth not.

Marlene M. Bruns  
Marlene M. Bruns

Subscribed and sworn to before me,  
this 27th day of Jan., 2000

Patricia Redlin  
PATRICIA REDLIN, Notary Public  
Lapeer County, Michigan  
My Commission Expires: 2-13-2001

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

LALIB:96193.1\112905-00001

**Duties Judges Higgins and Preisel Refuse to Allow  
the Clerk to Perform**

**Juvenile Cases**

1. **OPEN NEW CASES:** Accept pleadings; endorse on every filing the date filed; assign judge by blind draw; assign case number; receipt in appropriate filing fee; enter new case information on computer system; prepare order for re-assignment of judge and make necessary changes to the file and computer system and notify attorney of record; appointment of indigent counsel. (The Clerk eventually receives the filing fees.)
2. **MAINTENANCE OF RECORDS:** Accept pleadings, orders, judgments, etc.; endorse on each document the date filed; accept appropriate filing fees; record on register of actions a brief synopsis of each document filed; place records in case file; suppress files upon order of the Court; collect and compile statistics for the state; issue true copies or certified copies for the public and collect the statutory fees.
3. **COURTROOM FUNCTIONS: MOTION DAY:** Prepare civil and criminal docket and pull files; make sure all pleadings are in the file prior to going to court; check in attorneys or parties representing themselves; swear in witnesses; keep short notes and update register of actions as to what transpired in court; process documents received in court; prepare judgments to jail/prison; prepare abstracts to Secretary of State and Notices of Rights to Appeal.  
**TRIALS:** Swear in witnesses; mark and track exhibits; select jurors in jury trial; keep short notes and update register of actions as to what transpired in court; appoint appeal counsel through Michigan Appellate Assigned Counsel System; secure evidence and return exhibits after the appeal period.
4. **INQUIRIES:** Assists other court personnel, attorneys, Judges, and general public by answering questions when possible; pull files for review; answer telephone inquiries.
5. **FINANCES:** Collect and receipt appropriate filing fees; collect and receipt court ordered fines, costs, restitution, attorney fees, and crime victims rights fees; collect, receipt, and voucher return payments of bond money, court orders payable; voucher restitution checks; post payments of fines, costs, restitution, attorney fees, and crime victims rights fees to JIS system for tracking; post payment of restitution to victims to JIS system; balance and deposit receipts on a daily basis (we would like to deposit daily).
6. **JURORS:** Select potential Jurors in the courtroom.

### **All Other Family Division Matters**

1.     **TRIALS:** Swear in witnesses; mark and track exhibits; select jurors if jury trial; keep short notes and update register of actions as to what transpired in court; appoint appeal counsel through Michigan Appellate Assigned Counsel System; secure evidence and return exhibits after the appeal period.
2.     **JURORS:** Select potential Jurors in the courtroom.

LALIB:96152.I\112905-00001



# **EXHIBIT B**



**THE FORTIETH JUDICIAL CIRCUIT OF MICHIGAN**

**NICK O. HOLOWKA**  
*Circuit Judge*

Lapeer County Complex Building  
255 Clay St. • Lapeer, MI 48446  
(810) 667-0320  
FAX (810) 667-0340

**40<sup>TH</sup> JUDICIAL CIRCUIT**

**ADMINISTRATIVE ORDER NO 2000-01**

**FAMILY COURT OPERATIONS**

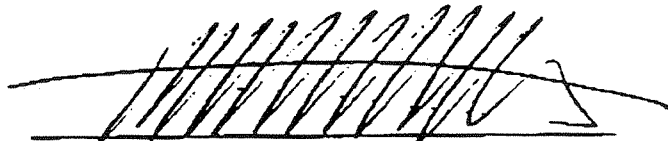
In order to implement the changes required by the legislation creating the Family Division of the Circuit Court (PA 374 and 388 of 1996), to enhance and clarify the procedures to be followed in the new Family Court, to clarify the role of the County Clerk in the operations of the Family Court, to merge the procedures previously followed in juvenile, child protective proceedings and ancillary proceedings into the Family Court, to maintain the Court's data entry system, and to adopt new procedures for efficient administration of the Family Court, the Court issues the following administrative order:

1. The County Clerk will continue to accept pleadings, maintain files and complete entries into the Court's data system in all domestic cases and PPOs and shall be responsible for the care and maintenance of those records.
2. The Family Court staff will continue to accept filings, maintain files, prepare orders and complete entries into the Court's data system in all juvenile cases, child protective proceedings, name changes, adoptions, and ancillary proceedings and shall be responsible for the care and maintenance of those records.
3. The Family Court staff will be responsible for scheduling all juvenile cases, child protective proceedings, name changes, adoptions, and ancillary proceedings. In addition, the Family Court staff will be responsible for making referrals, scheduling hearings, preparation of orders and arranging pre-trials and trials in domestic cases. The Family Court staff will make appropriate entries into the Court's data systems of these proceedings.
4. The County Clerk staff will continue to manage the motion day dockets, no-progress docket and non-service dismissals in domestic cases. The County Clerk staff will continue to attend the domestic motion docket sessions of the Family Court and make appropriate entries into the Court's data system of those proceedings.

5. The Family Court staff shall continue to be responsible for all filing fees, receipts, disbursements and accountings for support payments, restitution, administrative and program fees, and child care funds received in juvenile cases, child protective proceedings, name changes, adoptions and ancillary proceedings. The County Clerk shall continue to accept all filing fees in domestic cases for the Family Court.
6. Local Administrative Order 1999-02 is hereby rescinded and replaced by this order.

This order is issued pursuant to MCR 8.112 and will be effective upon approval by the State Court Administrator. The matters covered in this order will be reviewed on an ongoing basis and this order will expire on December 31, 2000, unless extended by order of the Court.

Dated: February 2, 2000



Nick O. Holowka, Chief Judge



THE FORTIETH JUDICIAL CIRCUIT OF MICHIGAN

NICK O. HOLOWKA  
Circuit Judge

Lapeer County Complex Building  
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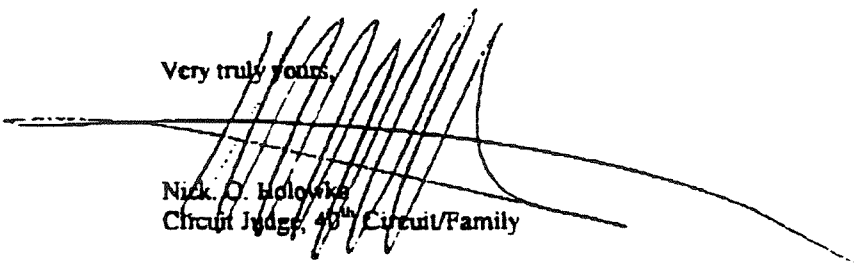
February 2, 2000

Bruce Kilmer  
State Court Regional Administrator  
P.O. Box 750  
Mt. Pleasant, MI 48804

Dear Bruce:

I have enclosed for your review, the Administrative Order No. 2000-01 which replaces the Administrative Order 1999-02 which expired on December 31, 1999. Please review; we await your approval.

Very truly yours,

  
Nick O. Holowka  
Circuit Judge, 40<sup>th</sup> Circuit/Family

cc: Hon. Michael P. Higgins  
Hon. Clayton E. Preisel  
Marlene Bruns, County Clerk